

House Engrossed

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
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First Regular Session
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CHAPTER 118

HOUSE BILL 2209

AN ACT

AMENDING SECTION 38-1101, ARIZONA REVISED STATUTES; RELATING TO LAW
ENFORCEMENT AND PROBATION OFFICERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-1101, Arizona Revised Statutes, is amended to
3 read:

4 38-1101. Law enforcement officers; probation officers; right to
5 representation; right to evidence on appeal; change
6 of hearing officer or administrative law judge;
7 definitions

8 A. If an employer interviews a law enforcement officer or probation
9 officer and the employer reasonably believes that the interview could result
10 in dismissal, demotion or suspension: —

11 1. The law enforcement officer or probation officer may request to
12 have a representative of the officer present at no cost to the employer
13 during the interview. The law enforcement officer or probation officer shall
14 select a representative who is available on reasonable notice so that the
15 interview is not unreasonably delayed. The representative shall participate
16 in the interview only as an observer. Unless agreed to by the employer, the
17 representative shall be from the same agency and shall not be an attorney.
18 The law enforcement officer or probation officer shall be permitted
19 reasonable breaks of limited duration during any interview for telephonic or
20 in person consultation with others, including an attorney, who are
21 immediately available. An employer shall not discipline, retaliate against
22 or threaten to retaliate against a law enforcement officer OR PROBATION
23 OFFICER for requesting that a representative be present or for acting as the
24 representative of a law enforcement officer OR PROBATION OFFICER pursuant to
25 this ~~subsection~~ PARAGRAPH.

26 2. BEFORE THE COMMENCEMENT OF ANY INTERVIEW DESCRIBED IN THIS SECTION,
27 THE EMPLOYER SHALL PROVIDE THE LAW ENFORCEMENT OFFICER OR PROBATION OFFICER
28 WITH A WRITTEN NOTICE INFORMING THE OFFICER OF THE SPECIFIC NATURE OF THE
29 INVESTIGATION, THE OFFICER'S STATUS IN THE INVESTIGATION, ALL KNOWN
30 ALLEGATIONS OF MISCONDUCT THAT ARE THE REASON FOR THE INTERVIEW AND THE
31 OFFICER'S RIGHT TO HAVE A REPRESENTATIVE PRESENT AT THE INTERVIEW.

32 B. NOTHING IN THIS SUBSECTION SHALL REQUIRE THE EMPLOYER TO EITHER:

33 1. STOP AN INTERVIEW TO ISSUE ANOTHER NOTICE FOR ALLEGATIONS BASED ON
34 INFORMATION PROVIDED BY THE EMPLOYEE DURING THE INTERVIEW.

35 2. TO DISCLOSE ANY FACT TO THE EMPLOYEE OR THE EMPLOYEE'S
36 REPRESENTATIVE THAT WOULD IMPEDE THE INVESTIGATION.

37 ~~B-~~ C. Subsection A does not apply to an interview of a law
38 enforcement officer or probation officer that is:

39 1. In the normal course of duty, counseling or instruction or an
40 informal verbal admonishment by, or other routine or unplanned contact with,
41 a supervisor or any other law enforcement officer or probation officer.

42 2. Preliminary questioning to determine the scope of the allegations
43 or if an investigation is necessary.

44 3. Conducted in the course of a criminal investigation.

45 4. Conducted in the course of a polygraph examination.

1 ~~E~~ D. In any appeal of a disciplinary action by a law enforcement
2 officer or probation officer, the parties shall exchange copies of all
3 relevant documents and a list of all witnesses pursuant to the following time
4 periods and requirements:

5 1. Within three business days after the employer's receipt of a
6 written request from the law enforcement officer or probation officer for a
7 copy of the investigative file that is accompanied by a copy of the filed
8 notice of appeal, the employer shall provide a complete copy of the
9 investigative file as well as the names and home or work mailing addresses of
10 all persons interviewed during the course of the investigation.

11 2. No later than five business days before the appeal hearing, or, if
12 the appeal hearing is scheduled more than twenty days after the notice of
13 appeal, no later than ten business days before the appeal hearing, the
14 employer and the law enforcement officer or probation officer shall exchange
15 copies of any documents that may be introduced at the hearing and that have
16 not previously been disclosed.

17 3. No later than five business days before the appeal hearing, or, if
18 the appeal hearing is scheduled more than twenty days after the notice of
19 appeal, no later than ten business days before the appeal hearing, the
20 employer and the law enforcement officer or probation officer shall exchange
21 the names of all witnesses who may be called to testify. A witness may be
22 interviewed at the discretion of the witness. The parties shall not
23 interfere with any decision of a witness regarding whether to be interviewed.
24 An employer shall not discipline, retaliate against or threaten to retaliate
25 against any witness for agreeing to be interviewed or for testifying or
26 providing evidence in the appeal.

27 ~~E~~ E. It is unlawful for a person to disseminate information that is
28 disclosed pursuant to subsection ~~E~~ D to any person other than the parties to
29 the appeal and their lawful representatives for purposes of the appeal of the
30 disciplinary action. This subsection does not prohibit the use of the
31 information in the hearing or disclosure pursuant to title 39, chapter 1,
32 article 2.

33 ~~E~~ F. The employer or the law enforcement officer or probation
34 officer may seek a determination by the hearing officer, administrative law
35 judge or appeals board hearing the appeal regarding any evidence that the
36 employer or the law enforcement officer or probation officer believes should
37 not be disclosed pursuant to subsection ~~E~~ D because the risk of harm
38 involved in disclosure outweighs any usefulness of the disclosure in the
39 hearing. In determining whether evidence will be disclosed, the hearing
40 officer, administrative law judge or appeals board may perform an in camera
41 review of the evidence and may disclose the material subject to any
42 restriction on the disclosure, including the closing of the hearing or the
43 sealing of the records, that the hearing officer, administrative law judge or
44 appeals board finds necessary under the circumstances.

1 ~~F.~~ G. In any appeal of a disciplinary action by a law enforcement
2 officer or probation officer in which a single hearing officer or
3 administrative law judge has been appointed to conduct the appeal hearing,
4 the law enforcement officer or probation officer or the employer may request
5 a change of hearing officer or administrative law judge. In cases before the
6 office of administrative hearings, on the first request of a party, the
7 request shall be granted. All other requests, including any subsequent
8 requests in cases before the office of administrative hearings, may be
9 granted only on a showing that a fair and impartial hearing cannot be
10 obtained due to the prejudice of the assigned hearing officer or
11 administrative law judge. The supervisor or supervising body of the hearing
12 officer or administrative law judge shall decide whether a showing of
13 prejudice has been made.

14 ~~G.~~ H. A party who violates subsection ~~G or D~~ D OR E, unless the
15 violation is harmless, shall not be permitted to use that evidence at the
16 hearing, except on a showing of good cause. The hearing officer or
17 administrative law judge, on a showing of good cause, may grant the opposing
18 party a continuance, otherwise limit the use of the evidence or make such
19 other order as may be appropriate.

20 ~~H.~~ I. If the employer amends, modifies, rejects or reverses the
21 decision of a hearing officer, administrative law judge or board, the
22 employer shall state the employer's reasons for the amendment, modification,
23 rejection or reversal.

24 ~~I.~~ J. This section does not preempt agreements that supplant, revise
25 or otherwise alter the provisions of this section, including preexisting
26 agreements between the employer and the law enforcement officer or probation
27 officer or the law enforcement officer's or probation officer's lawful
28 representative association.

29 ~~J.~~ K. For the purposes of this section:

30 1. "Appeal" means a hearing before a state or local merit board, a
31 civil service board, an administrative law judge or a hearing officer.

32 2. "Disciplinary action" means the dismissal or demotion or the
33 suspension for more than forty hours of a law enforcement officer or
34 probation officer that is authorized by statute, charter or ordinance and
35 that is subject to a hearing or other procedure by a local merit board, a
36 civil service board, an administrative law judge or a hearing officer.

37 3. "Investigative file" means the law enforcement agency's complete
38 report and any attachments detailing the incidents leading to the
39 disciplinary action.

40 4. "Law enforcement officer" means:

41 (a) An individual, other than a probationary employee, who is
42 certified by the Arizona peace officer standards and training board.

1 (b) A detention officer or correction officer who is employed by this
2 state or a political subdivision of this state other than a multi-county
3 water conservation district.

4 5. "Probation officer" means a probation officer or surveillance
5 officer who is employed by this state or a political subdivision of this
6 state.

APPROVED BY THE GOVERNOR APRIL 24, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2007.